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Proposed Reg. Section 1.280A-1(e)(iii)

Limitations on deductions with respect to a dwelling unit which is used by the taxpayer during the taxable year as a residence.

- (a) General rule. In the case of an individual, a partnership, a trust an estate, or an electing small business corporation (as defined in section 1371(b)), no deductions which would otherwise be allowable under chapter 1 of the Code shall be allowed with respect to the use of a dwelling unit used by such person during the taxable year as a residence except as provided in section 280A and in §§1.280A-1 through 1.280A-3. The requirements imposed by section 280A are in addition to the requirements imposed by other provisions of the Code. If a deduction is claimed for an item attributable to a dwelling unit used by the taxpayer during the taxable year as a residence, the taxpayer must first establish that it is otherwise allowable as a deduction under chapter 1 of the Code before the provisions of section 280A become applicable. Section 1.280A-2 sets forth the rules relating to the deductibility of expenses attributable to the rental of a dwelling unit used as a residence. Note that the allocation rule of section 280A(e) and §1.280A-3(c) applies to expenses attributable to any dwelling unit used by the taxpayer for personal purposes on any day during the taxable year, whether or not the taxpayer is treated as using the unit as a residence.
- (b) Deductions allowable without regard to any connection with a trade or business or an income-producing activity. Deductions which are allowable without regard to any connection with a trade or business or an income-producing activity are allowed with respect to the use of dwelling units. Such deductions include the deduction for interest under section 163, the deduction for taxes under section 164, and the deduction for casualty losses under section 165.
- (c) Dwelling unit.
 - (1) In general. For purposes of this section and §§1.280A-2 and 1.280A-3, the term “dwelling unit” includes a house, apartment, condominium, mobile home, boat, or similar property, which provides basic living accommodations such as sleeping space, toilet, and cooking facilities. All structures and other property appurtenant to a dwelling unit which do not themselves constitute dwelling units are considered part of the unit. For example, an individual who rents to another person space in a garage which is appurtenant to a house which the individual owns and occupies may claim deductions with respect to that rental activity only to the extent allowed under section 280A, paragraph (b) of this section, and §1.280A-3.
 - (2) Exception. Notwithstanding the provisions of paragraph (c)(1) of this section the term “dwelling unit” does not include any portion of a unit which is used exclusively as a hotel, motel, inn, or similar establishment. Property is so used only if it is regularly

available for occupancy by paying customers and only if no person having an interest in the property is deemed under the rules of this section to have used the unit as a residence during the taxable year. For example, this exception will apply to a unit entered in a rental pool (see §1.280A-3(e)) only if the owner of the unit does not use it as a residence during the taxable year.

(d) Use as residence.

(1) In general. For purposes of this section and §§1.280A-2 and 1.280A-3, a taxpayer uses a dwelling unit during the taxable year as a residence if the taxpayer uses the unit for personal purposes for a number of days which exceeds the greater of—

(i) 14 days, or

(ii) 10 percent of the number of days during the year for which the unit is rented at a fair rental. For purposes of this determination, a unit shall not be treated as rented at fair rental for any calendar day on which it is used for personal purposes.

(2) Examples. The provisions of this paragraph (e) may be illustrated by the following examples:

Example (1). B owns a boat suitable for overnight use. B is deemed, under paragraph (d) of this section, to have used the boat for personal purposes for 16 days during B's taxable year. B rents the boat at fair rental for 163 days during B's taxable year. B is not deemed to have used the boat for personal purposes on any of the 163 days for which it is rented at fair rental. Since the number of days on which B used the boat for personal purposes does not exceed 16.3 (10 percent of 163, the number of days on which the boat is treated as rented at a fair rental for purposes of this determination), B has not used the boat as a residence for the taxable year.

Example (2). Assume the same facts as in example (1) of this subparagraph, except that 5 of the 16 days on which B is deemed to have used the boat for personal purposes were included in the 163 days on which the boat was rented at fair rental. On those 5 days the boat is not treated as rented at a fair rental for purposes of this paragraph. Since the number of days on which B used the boat for personal purposes exceeds 15.8 (10 percent of 158, the number of days on which the boat is treated as rented at a fair rental for purposes of this determination), B has used the boat as a residence for the taxable year.

(e) Personal use of dwelling unit.

(1) General rule. For purposes of this section and §§1.280A-2 and 1.280A-3, a taxpayer shall be deemed to have used a dwelling unit for personal purposes for a calendar day if, for any part of such day, any portion of the unit is used—

(i) For personal purposes by the taxpayer or any other person who has an interest in the unit;

(ii) By a brother or sister (whether by the whole or half blood), spouse, ancestor, or lineal descendant of the taxpayer or of any other person who has an interest in the unit;



- (iii) By any individual who uses the unit under an arrangement which enables the taxpayer to use some other dwelling unit for any period of time, whether or not a rental is charged for the use of the other unit and regardless of the length of time that the taxpayer uses the other unit; or
- (iv) By any individual, other than an employee with respect to whose use section 119 (relating to meals or lodging furnished for the convenience of the employer) applies, unless for such day the dwelling unit is rented for a rental which, under the facts and circumstances, is fair rental.

For purposes of this paragraph, a person is considered to have an interest in a dwelling unit if that person holds any interest in the unit (other than a security interest or an interest under a lease for a fair rental) even if there are no immediate rights to possession and enjoyment under the interest.

- (2) Special rule for “qualified rental period”. For purposes of determining whether section 280A(c)(5) and §1.280A-3(d) limit deductions for expenses allocable to a “qualified rental period”, a taxpayer shall not be considered to have used the rented unit for personal purposes on any day during the taxable year before or after a “qualified rental period” described in paragraph (e)(2)(ii) of this section, or before a “qualified rental period” described in paragraph (e)(2)(ii) of this section, if the rented unit was the principal residence of the taxpayer with respect to that day. The use of the unit for personal purposes shall, however, be taken into account for all other purposes of section 280A. A “qualified rental period” is a consecutive period of—
 - (i) 12 or more months which begins or ends during the taxable year, or
 - (ii) less than 12 months which begins in the taxable year and at the end of which the rented unit is sold or exchanged, and for which the unit is rented to a person other than a member of the family of the taxpayer, or is held for rental, at a fair rental. For purposes of the preceding sentence, the family of the taxpayer includes the brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants of the taxpayers. For the meaning of the term “principal residence”, see section 1034 and §1.1034-1(c)(3).
- (3) Dwelling units in which a partnership, a trust, an estate, or an electing small business corporation has an interest. For purposes of applying the provisions of paragraph (e)(1) of this section to a dwelling unit in which a partnership, a trust, an estate, or an electing small business corporation (as defined in section 1371(b)) has an interest, the entity shall be considered to have made personal use of the unit on any calendar day on which any member of the partnership, beneficiary of the trust or estate, or shareholder in the corporation would be considered to have made personal use of the unit if that member, beneficiary, or shareholder had an interest in the dwelling unit.
- (4) Use of the unit for repairs and maintenance. For purposes of applying the provisions of paragraph (e)(1) of this section, the use of a dwelling unit by any individual on any calendar day shall be disregarded if on that calendar day that individual is engaged in repair or maintenance work on the unit on a substantially full-time basis. An individual

will be deemed to have satisfied this condition on any calendar day on which the individual works on the unit for the lesser of 8 hours or 2/3 of the time that the individual is present on the premises. If all individuals on the premises on a calendar day who are capable of working do work on the unit on a substantially full-time basis, incidental use of the unit on the same day by other individuals incapable of working, e.g., small children, shall be disregarded for purposes of paragraph (e)(1) of this section.

(5) Examples. The provisions of this paragraph (e) may be illustrated by the following examples:

Example (1). B owns a vacation home which B rents to S, B's sister, at a fair rental for 10 days. B also rents the home to C at fair rental for 11 days as a part of an arrangement whereby B is able to use D's home for 6 days. As a favor, B rents the home to F at a discount rate for 15 days. On the basis of the rental activity described, B is deemed to have used the home for personal purposes on 36 days.

Example (2). X Inc., an electing small business corporation in which A and B are shareholders, is the owner of a fully equipped recreational vehicle. During the month of July, the vehicle is used by three individuals. A uses the vehicle on a 7-day camping trip. D, who is B's daughter, rents the vehicle from A and B at fair rental for 10 days. E rents the vehicle at fair rental for 12 days under an arrangement whereby B is enabled to use an apartment owned by F, a friend of E, for 9 days. X Inc. is deemed to have used the dwelling unit for personal purposes on any day on which any of its shareholders would be deemed to have so used the unit if each shareholder had an interest in the unit.

Example (3). A owns a lakeside cottage which A rents during the summer. A arrives at the cottage alone at 8 p.m. on a Thursday to prepare it for the summer season. A works on the cottage for 3 hours that evening and for 10 hours on Friday. B, A's spouse, joins A at the cottage at noon on Saturday. A works on the cottage for 9 hours that day, and B works on the cottage for 4 hours. On Sunday A and B work on the cottage for one hour and then return home. A and B ate their meals in the cottage and slept there during the time that they were present. A will be deemed to have used the cottage for personal purposes on Saturday because B, who made personal use of the cottage on that day, did not work on the cottage on a substantially full-time basis. A also made personal use of the cottage on Sunday on which A worked only briefly. A will not be deemed to have used the cottage for personal purposes on Thursday or Friday because the use by A, the only person making use of the cottage on those days, is disregarded since A was engaged in repair and maintenance work on the unit for more than 2/3 of the time that A was on the premises on Thursday and for more than 8 full hours on Friday.

Example (4). A owns a mountain cabin which A rents for most of the year. A works on maintenance of the cabin on a substantially full-time basis for several days. A's four-year old son, S, accompanies A to the cabin and plays while A works. The personal use of the cabin by S is disregarded since S, who is incapable of working is accompanying A, who is working on a substantially full-time basis. If S were 16 years old and otherwise capable of working, however, A would be deemed to have used the cottage for personal purposes unless S worked on the cabin on a substantially full-time basis.

Example (5). B, an individual whose taxable year is the calendar year, uses a dwelling unit as a principal residence from January 1, 1978, to June 30, 1978. On July 1, 1978, B rents the unit at a fair rental to D, an unrelated individual, for a two-year period beginning immediately. In determining whether section 280A(c)(5) and §1.280A-3(d) limit deductions for expenses allocable to this “qualified rental period”, B is not considered to have used the unit for personal purposes from January 1, 1978, to June 30, 1978. Note, however, that section 280A(e) and §1.280A-3(c) limit the portion of the total 1978 expenses with respect to the unit which may be attributed to the “qualified rental period.” B's personal use of the unit is similarly taken into account in applying section 280A(c)(5) to any other use of the unit during the taxable year, e.g., the use of a portion of the unit as a place of business.

- (f) Coordination with section 183. If a dwelling unit is used by the taxpayer during the taxable year as a residence, section 183 (relating to activities not engaged in for profit) shall not apply with respect to the unit for the taxable year. The taxable year shall, however, be taken into account as a taxable year for purposes of determining whether the presumption described in section 183(d) applies.

Example. B owns a cottage which B rents for part of the summer in 1976, 1977, and 1978. B also uses the cottage as a residence in 1976 and 1977, but not in 1978. B's rental income for 1976 exceeds the expenses allocable to the rental activity, but in 1977 the expenses exceed the rental income. In determining whether B may claim for 1978 the benefit of the presumption described in section 183(d), the rental activity in 1976 and 1977 is taken into account even though section 183 did not apply with respect to the cottage for those years.

- (g) Effective date. This section and §§1.280A-2 and 1.280A-3 apply to taxable years beginning after December 31, 1975.